

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 5:03-CR-156-1H
No. 5:16-CV-85

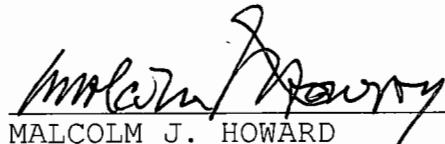
JAMES DAVID SMITH,)
Petitioner,)
v.) **ORDER**
UNITED STATES OF AMERICA)
Respondent.)

This matter is before the court on petitioner's motion to vacate or set aside his sentence pursuant to 28 U.S.C. § 2255, which was filed February 17, 2016 [DE #14]. The government filed a motion for summary judgment. This court, on October 25, 2017, ordered the government to file supplemental briefing as to whether petitioner's prior Florida burglary convictions are violent felonies under the Armed Career Criminal Act ("ACCA") within 10 days. By filing on November 1, 2017, the government concedes that petitioner is not an armed career criminal and should be resentenced without that enhancement.

For the reasons stated in the government's brief, the court hereby VACATES its judgment, entered December 11, 2003. This matter is SCHEDULED for resentencing at the court's December 5, 2017, criminal term. The United States Probation Office is

DIRECTED to provide the parties and the court with a resentencing memorandum.

This 5th day of November 2017.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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